In the

Supreme Court of the United States

October Term, 1956

No. 362

BETTY LEVIN, a holder of Missouri Pacific Railroad Company Class B common stock,

Petitioner,

v.

MISSISSIPPI RIVER FUEL CORPORATION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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The briefs of the respondents tend to obscure two basic issues in this case.

First: The MoPac charter calls for class voting on any alteration or change of class rights, and on elimination of the class voting provisions themselves. The first issue, therefore, is whether the proposed "plan of consolidation" would alter or change class rights or would eliminate the class voting provisions of the charter.

Second: 49 U.S.C. § 5(11) provides that railroad consolidations under the Interstate Commerce Act must have the assent

> "of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the [stock] holders".

Section 5(11) thus poses the second issue: whether there is anything in § 5(11), or in the applicable Missouri law to which § 5(11) defers, that prevents operation of the charter requirement for class voting on the proposed plan.

This brief is in reply to the respondents' arguments that class voting on the proposed plan is not provided under (I) the charter, (II) section 5(11) of the Interstate Commerce Act, or (III) the Missouri law.

I. The Charter Provisions for Class Voting

The charter provides that

> "The Company shall not, without the consent . . . of the holders of . . . at least a majority of the number of shares of the Class B Stock then outstanding, . . . (c) alter or change the . . . special or relative rights . . . of the Class B Stock or (d) amend or eliminate any of the provisions of this paragraph (3)." Article VII D(3)

Clause (c)—Class voting on alteration or change of class rights.

The proposed plan would strip the Class B stockholders of more than $250 million of their equity of $260 million, and would transfer most of it to Mississippi, the controlling Class A stockholder and the proponent of the plan. The plan would also abolish the Class B stockholders' exclusive right to all the future residual earnings (currently $17 million a year after maximum dividends of $9 million on the Class A stock), and leave them with only a minuscule share of future earnings.

The court of appeals recognized the effects of the plan:

> "One observes readily what the proposed plan appears to do to the Class B holdings."[1]

MoPac, however, argues that the class vote should be dispensed with because, in any event, the ICC must find the proposal to be fair.

That is not what the charter provides. The plan of bankruptcy reorganization gave the Class B stockholders, who are the sole residual common stockholders and the true owners of MoPac, the essential right and power to protect their investment by class voting on any change of class rights, fair or unfair. If a particular change also happens to require ICC approval as just and reasonable, the latter requirement is simply additional protection for the stockholders.

If the respondents' position were correct—that the proposed plan does not require class voting—then the Class A stockholders could have, immediately after the final plan of reorganization was consummated, proposed a plan of consolidation like the one now in issue without the necessity of class voting. That would have instantly nullified all the efforts of the ICC, the courts, and the parties. Quite obviously, neither the ICC nor the courts would have permitted it.

The passage of time does not diminish the rights of the Class B stockholders. On the contrary, as the value of their residual equity has increased with the passage

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[1] R. 145. It is interesting to note what the court of appeals does about this attempted spoliation. It recounts the arguments made on behalf of the would-be raider, Mississippi; it lists the "contrary argument" for the victims, the Class B stockholders; and it concludes that "[t]hese opposing points of view as to MoPac's Articles are not easily resolved." (R. 150) Then it puts its weight and authority behind the would-be raider, and deprives the victims of their class vote, the principal shield granted to them only ten years ago by the ICC and the bankruptcy court against the possibility of just such attempted plunder.

of time, the value of their protective class voting rights has grown correspondingly.[2]

MoPac itself, when its own investment is at stake, fully appreciates the need for the separate and independent protection of class voting on railroad consolidations.[3]

The respondents characterize the charter as a private contract. It is that and more. It embodies the final mandates of a federal commission and court after 23 years of proceedings. Every responsible party and federal official involved in the proceedings was fully aware that the class voting provisions of the charter were crucial to the final plan of reorganization, and were binding on MoPac and its stockholders. Bankruptcy Act §§ 77(b), (f), 11 U.S.C. §§ 205 (b), (f).

The respondents raise the specter of 2% wielding a "veto power". But this 2% is not a "minority" in a one-class stock structure wielding a "veto power" over the other 98%. This 2% is 100% of the common stock. The Class B's right to all the residual earnings and equity would be meaningless without an effective vote to protect it.

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[2] The ICC contemplated earnings on the Class B stock of $214 per share before capital and sinking funds and $32 per share after funds. "The latter figure represents total earnings of $8.7 million after payment of dividends on the class A stock. Considering the capital requirements of the system, these earnings seem reasonable." *Missouri Pac. R. Co. Reorganization*, 290 ICC 477, 588 (1954). For the actual results, see our main brief dated November 23, 1966 (hereinafter "Levin Br.") at p. 6.

[3] To support its bid for control of the Chicago & Eastern Illinois Railroad ("C&EI"), MoPac acquired just enough of the C&EI minority Class A preferred stock to block consolidations of C&EI with other railroads. (The C&EI charter requires for consolidations the separate consent of two-thirds of its Class A stock. MoPac acquired just one-third of that Class A stock.) MoPac and Mississippi expressly relied on that protective class voting right before the ICC. See Levin Br. 21. The proceedings there cited have just been affirmed by this Court. *Illinois Central R. Co., et al.* v. *United States, et al.*, — U.S. — (1967), 35 U.S.L. WEEK 3233, decided January 9, 1967.

The respondents nevertheless argue that Article VII D(3) of the charter does not permit class voting on changes of class rights effected by mergers and consolidations, because that article does not expressly mention mergers and consolidations. There is no need to repeat the answers to that argument (see Levin Br. 19-20. For MoPac's contrary interpretation of Article VII D(3) to the ICC in 1961, see Levin Br. 29-30).

But MoPac now resurrects a point we did not discuss in our main brief because we assumed that MoPac had abandoned it, as indeed MoPac had in the court of appeals. MoPac now apparently argues that class voting is not required because the proposed plan involves a "consolidation" in which the surviving corporate entity would not be MoPac but rather MoPac's new paper subsidiary, as distinguished from a merger with MoPac as the surviving corporation (MoPac Br. 44).

Such factitious distinctions were thoroughly punctured by the district court (R. 93); and the respondents themselves scorned them in the court of appeals.[4] Moreover, it is *MoPac's* board of directors (all elected by Mississippi) that adopted the proposed plan; *MoPac* that created a paper subsidiary to be the surviving corporation; *MoPac* that submitted the plan to the ICC; *MoPac* that stated the intention of putting it to a two-thirds aggregate and not a class vote of the stockholders. The class voting provisions of the charter could not be more directly invoked.

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[4] "There is neither reason nor logic to explain, justify or support any such exception [based on whether MoPac is or is not the surviving corporation]." (Mississippi Br. in court of appeals, p. 30.) ". . . Section 5(11) covers mergers and consolidations without distinguishing between them." (MoPac Br. in court of appeals, p. 15.)

Moss Estate, Inc. v. *Metal & Thermit Corp.*, 73 N.J. Super. 56, 179 A.2d 54 (Ch. 1962) (statutory and charter provisions for class voting on charter amendments to increase authorized stock *held* inapplicable to voting on merger under statute providing two-thirds vote on mergers) is not in point on any issue in this case.

Clause (d)—Class voting on elimination of the class voting provisions themselves.

Article VII D(3) of the charter requires class voting on any action that would

> "(d) amend or eliminate any of the provisions of this paragraph (3)."

MoPac concedes that the proposed plan would "terminate altogether the present corporate charter of MoPac" (MoPac Br. 45). That termination would necessarily eliminate the constituent class voting provisions. Accordingly, Article VII D(3)(d) requires class voting.

The district court relied on clause (d) of Article VII D(3) as one ground for concluding that class voting is required on the proposed plan (R. 98).

The court of appeals was aware of that holding (R. 142), yet nowhere in the court of appeals' opinion is there a single sentence discussing it. This omission is striking, in view of the court's otherwise detailed cataloguing of arguments.

MoPac touches ever so lightly on clause (d). MoPac suggests that it means only a certain kind of elimination of the class voting provisions, namely, elimination by a "two-step scheme" (MoPac Br. 45). But clause (d), of course, says absolutely nothing about two steps or any other number of steps. It simply specifies elimination of the class voting provisions as an action prohibited without class voting.

We respectfully submit that Article VII D(3)(d), without more, dispositively declares that the charter requires class voting on the proposed plan.

II. Section 5(11) of the Interstate Commerce Act [5]

The court of appeals, as well as the respondents, erroneously minimize the role of § 5(11); just as they would minimize the charter, when they suggest that its voting requirements are not important because, in any event, the proposed plan must be approved by the ICC as just and reasonable under § 5(2). The latter requirement, say the respondents, is protection enough for the stockholders.

But that is not what Congress intended or said. Congress expressly mandated in § 5(11) that stockholders shall have the protection of their voting rights "under applicable State law". That requirement is entirely independent of the requirement of fairness under § 5(2); neither is subordinate to the other and neither is dispensable. *Schwabacher* v. *United States*, 334 U.S. 182, 194 (1948).

The respondents nevertheless argue that § 5(11) should be constricted by reading two novel limitations into the "vote . . . . required under applicable State law": (1) that such vote does not include any vote required by corporate charter provisions authorized by State law (MoPac Br. 66-87; Miss. Br. 98-99); and (2) that, in any event, the vote may never be a *class* vote required under State law, but only a nonclass supermajority (MoPac Br. 88-94; Miss. Br. 100-101).

We note, but will not consider further, that both of those arguments would appear to be sham.[6]

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[5] 49 U.S.C. § 5(11), which conditions railroad consolidations on the assent "of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote".

[6] MoPac and Mississippi expressly relied on the *charter* provisions of MoPac and of C&EI as requiring *class* voting on mergers and consolidations with other railroads (hence necessarily subject to § 5(11)), in two other recent proceedings before the ICC and the courts. *Supra*, n. 3; Levin Br. 29-30, 32.

(1) That the vote "required under applicable State law" includes a vote required by charter provisions authorized by State law was plainly recognized by the court of appeals:

> "We think of no persuasive reason for regarding § 5(11) as distinguishing between a statutory provision for a class vote and a charter provision for it pursuant to statutory authority." (R. 156)

That statement would appear to be a complete answer to the contention that a vote required by authorized charter provisions is not a vote "required" under State law for purposes of § 5(11). Yet the court, after making its clear and accurate statement, ignored it and ignored the charter provisions as well.[7]

Never before in the history of mergers and consolidations under the Interstate Commerce Act has there been a departure from the observance of charter requirements for stockholder voting. If the Interstate Commerce Act is to be rewritten, it is a task for Congress, not the respondents or the courts.

(2) The respondents would alternatively and additionally limit § 5(11) by construing it to exclude *class* voting in any event; they say § 5(11) defers only to *non*class voting required under State law. They say that the "different vote" required under State law means only "different in quantity or size, not different in kind or character" from a "majority" vote, and that the "number" of different votes so required means only the "number" of a nonclass supermajority. (Mississippi Br. 100; MoPac Br. 90)

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[7] The court of appeals devised the doctrine that the deference to State law in § 5(11) is merely an "exception", and that the majority-vote provision of § 5(11), which is applicable only when no different vote is required under State law, is "the primary standard" (R. 148, 157). Such labelling defies the very language of § 5(11), which bespeaks particular care to preserve the state-law voting requirements intact. The majority-vote provision of § 5(11), being operative only when there is no different vote required under State law, is, if anything, the secondary standard.

The respondents would rewrite the dictionary.[8] They would also overturn the consistent practice of the ICC and the carriers (including MoPac itself), who have without exception heretofore applied § 5(11) as dictating class voting where required under State law. (For examples, see Levin Br. 27 nn. 20 and 21.)

MoPac also observes that § 5(11) does not *specify* a class vote, but § 20b does; and from this MoPac concludes that § 5(11) does not defer to any class vote (MoPac Br. 93).

The fallacy of MoPac's conclusion is demonstrated by § 20b itself. That section provides for the modification of railroad securities, subject, however, to *both* (1) a finding by the ICC that the modification is in the best interests of each class of stockholders, *and* (2) acceptance by the holders of 75% of each affected class of stock. Thus Congress did not regard class voting as superfluous just because ICC approval is also required. In § 5(11), however, instead of adopting an exclusive federal voting standard, Congress expressly deferred to whatever vote is required under State law. When that vote is a class vote, such class vote obtains under § 5(11).

MoPac observes that § 5 was intended to overcome state-law "obstacles" to railroad consolidations (MoPac Br. 25). These obstacles were the deficiencies in the railroads' *power and authority* granted by charters and state statutes to merge or consolidate; these obstacles had nothing to do with the stockholder voting requirements.

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[8] "**different** . . . 1. Of various or contrary nature, form, or quality; partly or totally unlike; dissimilar . . . 3. Dissimilar from what is usual; out of the ordinary; unusual; . . . DIFFERENT . . . may denote unlikeness of whatever sort. . . ." *Webster's New International Dictionary* (2nd ed. 1959) 727.

As for the word "number", no petitioner ever said it should be "construed as synonymous with 'separate class vote'" (Mississippi Br. 100). No respondent, however, explains why "number" does not mean the number of votes required in a class vote as well as in a nonclass vote.

MoPac at one point recognizes the distinction:

> "The basic problem with these railroad corporation consolidation statutes is not their voting standard, but that they frequently do not authorize consolidations where federal policy would authorize them. . . ."[9]

III. The Missouri Statutes

The respondents contend (1) that it is Chapter 388, not Chapter 351, of the Missouri Revised Statutes that contains the applicable State law; (2) that Chapter 388 does not permit class voting on consolidations; (3) but if Chapter 351 does apply, it too forbids class voting on consolidations.

The district court and the court of appeals agreed that Chapter 351 is the applicable State law. (R. 94, 150-153)

If this Court chooses to consider the Missouri statutes, the following will be readily seen:

(1) Chapter 351, not Chapter 388, is the applicable State law.

(2) Even if Chapter 388 were applicable, class voting would obtain thereunder.

(3) Class voting obtains under Chapter 351.

Preliminarily, we note that the respondents devote scores of pages to a quest for Missouri legislative policy. On

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[9] MoPac Br. 78 n. 7. At another point, MoPac says that a purpose "of the present form of Section 5(11) was to rectify the situation . . . where the 'applicable State law' of railroad consolidations did not go far enough and confer appropriate corporate powers on the corporations in question to effect the consolidation." (MoPac Br. 49) That is a confusing misapplication of the term "applicable State law". That term in § 5(11) does *not* refer to the deficient state-law grants of corporate powers to consolidate. It unequivocally refers to the state-law requirements for stockholder voting, which Congress did not regard as an obstacle, but, on the contrary, expressly incorporated by reference.

the one pertinent issue of stockholder voting, however, a page or two would have sufficed. Missouri policy is clear: Look to the charter provisions.

(1) Chapter 351, not Chapter 388, is the applicable State law.

(a) Chapter 388 deals with only limited types of railroad consolidations, covered in two sections. Section 388.290 deals with consolidations of two or more railroads "in this state" (Missouri) to form one continuous line. T&P is not in Missouri. Section 388.300 deals with a consolidation of one railroad aiding another in the construction of connecting lines, which is not what is contemplated by the proposed plan. Thus no consolidation provision of Chapter 388 is applicable. (For text of the Chapter 388 provisions, see MoPac Br. 14a-18a.)

But § 351.690(3) (Levin Br. 5a) makes applicable to railroad corporations those provisions of Chapter 351 which supplement and are not inconsistent with other laws applicable to railroads. The consolidation provisions of Chapter 351 are broad and general, encompassing types of consolidations (literally including the proposed plan in issue) beyond those described in Chapter 388. But Chapter 388 does not purport to be exclusive, so that the broader consolidation provisions of Chapter 351 merely supplement, without being inconsistent with, the limited consolidation provisions of Chapter 388. Any applicable provision of the Missouri Constitution (such as the 60-day notice provision in Article XI, § 10) would simply be superimposed on the procedural provisions of Chapter 351.

(b) MoPac itself relied on Chapter 351 in the Joint Application to the ICC, stating that the proposed plan would be submitted for stockholder approval by a two-thirds vote, which is a requirement found in Chapter 351 but not in Chapter 388. (R. 35, 91; Joint Application to ICC, p. 29)

(c) As part of the bankruptcy reorganization in 1955, MoPac was merged with its 94%-owned subsidiary New Orleans, Texas and Mexico Railway Company. The MoPac stockholder voting requirements for that merger were recognized by both the ICC and the district court to be governed by Chapter 351. *Missouri Pac. R. Co. Reorganization*, 290 ICC 674, 684 (1954); *In re Missouri Pac. R. Co.*, 129 F. Supp. 392, 402 (E.D. Mo. 1955), *aff'd*, 225 F. 2d 761 (8 Cir. 1955), *cert. denied*, 350 U.S. 959 (1956).

(d) Dozens of lawyers, including Mississippi's counsel in this case, represented to the federal courts and the ICC that Chapter 351 governs the MoPac stockholder voting requirements for the MoPac-New Orleans merger. See, *e.g.*, the petitions for certiorari in 350 U.S. 959, *supra*, October Term 1955, No. 567 at pp. 3, 11, and No. 568 at pp. 7, 28, 29; Brief in Behalf of Appellees in 225 F.2d 761, *supra*, Nos. 15335/7 at p. 20.

Thus history and practice, with MoPac itself the authoritative precedent, confirm the lower courts' conclusions that Chapter 351 applies to a consolidation of MoPac with one of its subsidiaries.

(2) Even if Chapter 388 were applicable, class voting would obtain thereunder.

(a) Section 388.020 subjects railroads to all the provisions of Chapter 388 "not inconsistent with the provisions of their charter".[10] Thus charter provisions are made controlling.

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[10] "388.020. Chapter to govern

"All existing railroad corporations within this state, and such as may be hereafter chartered or formed, shall, respectively, have and possess all the powers and privileges contained in this chapter; and they shall be subject to all the duties, liabilities and provisions not inconsistent with the provisions of their charter herein contained."

The majority-vote provisions of §§ 388.290.1 and 388.300.2 are not, of course, necessarily inconsistent with the MoPac charter provisions for a majority vote of each class; but if the statutory provisions were inconsistent with the charter provisions, the latter would prevail. *Huss v. Wabash Ry Co.*, 84 Mo. App. 111, 115 (1900); *Daniels v. St. Louis, K. C. & N. Ry Co.*, 62 Mo. 43, 48 (1876).

(b) That railroad charters in Missouri may provide for class voting, to augment or replace a nonclass vote otherwise required under the railroad laws, is confirmed by practice. MoPac itself had such a provision in its original (1917) charter, Article VII(6), requiring a class vote of the preferred stock on any increase in the amount of authorized preferred stock; in the absence of that charter provision, only a nonclass vote would have been required for an increase of preferred stock. Mo. Const. 1875, Art. XII, § 8; Mo. Rev. Stat. (1939) § 5020; § 388.220.2(3)(b) (enacted in 1945).

(3) Under Chapter 351, the charter provisions for class voting are controlling.

(a) The statute that authorizes the MoPac charter to provide for class voting is § 351.055 (not § 351.270 as MoPac erroneously reiterates). Section 351.055 states that the charter "shall set forth":

> "the preferences, qualifications, limitations, restrictions, and the special or relative rights . . . in respect of the shares of each class. . . ."[11]

Pursuant to that directive, the MoPac charter sets forth the relative rights, including class voting rights, of each class of stock (R. 11-15). Such charter provisions necessarily govern; if they did not, the statutory directive would be meaningless.

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[11] Levin Br. 3a-4a, Section 351.055 also states that the charter shall set forth "[a]ny other provisions, not inconsistent with law, which the incorporators may choose to insert."

Despite that statutory directive, the respondents argue that charters may not require class voting for any corporate matter unless some statute already specifies class voting on that matter.

Long-established Missouri practice is to the contrary.[12]

The respondents further argue that § 351.270, enacted in 1943, precludes such charter provisions for class voting.

On the contrary, § 351.270 on its face looks to the observance of charter provisions for more stringent voting requirements, including class voting, and declares that they "shall control".[13]

That § 351.270 requires the observance of charter provisions for class voting, where class voting is not otherwise specified by statute, is confirmed by the following:

(b) In all of Chapter 351, the *only* corporate matter for which class voting is required (in the absence of charter requirements therefor) is the adoption of certain charter amendments. Section 351.090.1(3) (set out at MoPac Br. 2a-4a). That statute, however, itself declares that if the charter requires a more stringent class vote than does the

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[12] Section 351.090.1(3)(b)b, (c)b (set out at MoPac Br. 3a, 4a) expressly recognizes the existence and validity of provisions for certain class voting in the charters of corporations existing prior to the passage of any statutory requirement for such class voting.

See *Missouri Business Enterprises*, Practice Handbook No. 6, Missouri Bar Continuing Legal Education Committee (1962), § 8.14, p. 217, Article III (b) (8), suggesting a model charter provision for class voting on certain corporate matters for which class voting is not otherwise required by statute.

[13] "351.270. Vote of concurrence of shareholders shall be controlled by articles of incorporation, when—

"Whenever with respect to any action to be taken by the stockholders of a corporation the articles of incorporation require the vote or concurrence of the holders of a greater portion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control this section."

statute, the charter provisions shall prevail (§ 351.090.1(3)(b)b, (c)b). Therefore, insofar as § 351.090.1(3) is concerned, § 351.270 is entirely superfluous. If the reference in § 351.270 to class voting is to have any application at all, it can only be a reference to charter provisions for class voting on corporate action *other* than amendments to the charter, although no such other corporate action requires class voting in the absence of charter provisions therefor.

(c) Section 351.315.2, enacted in 1965 and dealing with the removal of directors, expressly recognizes that charters may require class voting for the election of directors, although such class voting is not specified by statute.[14]

(d) The only commentator directly in point describes the progenitor Illinois statute (Ill. Rev. Stat. § 157.146, which is virtually identical with its Missouri offspring § 351.270) as follows:

> "It clearly follows that as to any matters which are the proper subject for action by the shareholders, not only may the charter require a three-fourths vote or a nine-tenths vote or even the unanimous vote of shareholders, but it may also require class voting on any matter and more than the statutory majority of votes from the shares of any class. The appropriate use of such provisions may give at least a negative control to minorities or to the holders of specified classes of shares." Haller, *Corporate Control under the Illinois Business Corporation Act through Charter and By-Law Provisions*, 32 Chicago Bar Rec. 411, 413 (1951).

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[14] *"Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation,* the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole." (Emphasis supplied.) Section 351.315.2, last sentence. (For entire section, see *infra*, p. 2a.)

(e) The respondents argue that the term "greater portion" in § 351.270 means only greater in quantity, not greater through the addition of a *class* voting requirement in the charter. Such a construction is refuted by other sections of Chapter 351. For example, the terms "larger vote" and "percentage vote" are used to refer to votes which necessarily include not only nonclass votes but also the *class* votes required by §351.090.1(3) for charter amendments.[15] Indeed, the respondents themselves relied on the class voting provisions in the C&EI charter (*supra*, p. 4, n. 3) where the applicable State statute, Ind. Stat. § 55-2409(2), requires a two-thirds nonclass vote "or such *greater proportion* as the articles of association . . . may require". (Emphasis supplied.)

The foregoing analyses of §§ 388.020, 351.055, and 351.270 all point to a broad Missouri policy of looking to charter provisions for stockholder voting, class as well as nonclass, to determine the vote required for corporate action.

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[15] Sections 351.265 and 351.107(2), respectively, *infra*, pp. 1a-2a.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed with directions that, on remand, the judgment of the district court be affirmed.

Respectfully submitted,

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January, 1967

APPENDIX

Mo. Rev. Stat. Chapter 351:

351.107. Restated articles of incorporation may be amended at time of restatement

The articles of incorporation may be amended at the time of restatement of the articles of incorporation, in the following manner:

(1) The procedure required by this chapter for effecting an amendment to the articles of incorporation may be carried out concurrently with the procedure for restatement so that the proposed amendment and the restated articles may be presented to the same meetings of directors and shareholders;

(2) Such amendment, upon adoption by that percentage vote of shareholders required for that particular amendment, and on being set forth in the certificate of amendment required by this chapter, may then be incorporated into such restated articles of incorporation;

(3) In the event of such amendment, the restated articles shall not be filed in the office of the secretary of state unless and until such amendment has become effective in the manner provided in this chapter.

351.265. Quorum of outstanding shares

Unless otherwise provided in the articles of incorporation or bylaws, a majority of the outstanding shares entitled to vote at any meeting represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than a majority of the outstanding shares entitled to vote, but less than such quorum shall have the right successively to adjourn the meeting to a specified date not longer than ninety days after such adjournment, and no notice need be given of such adjournment to shareholders not present

at the meeting. Every decision of a majority of such quorum shall be valid as a corporate act unless a larger vote is required by this chapter.

351.315. Number of directors, how elected—term—how removed

1. A corporation shall have one or more directors as provided for in the articles of incorporation. Any corporation may elect its directors for one or more years, not to exceed three years, the time of service and mode of classification to be provided for by the bylaws of the corporation; provided, however, that there shall be an annual election for such number or proportion of directors as may be found upon dividing the entire number of directors by the number of years composing a term. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders entitled to vote shall elect directors to hold office until the next succeeding annual meeting, except as herein provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

2. At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.